**Resolved:** In the United States, juveniles charged with violent felonies ought be treated as adults in the criminal justice system.

Ought is desirability, so the feasibility of treating juveniles as adults is irrelevant. Ought also makes the resolution prescriptive—descriptive arguments about violating law or the Constitution mean nothing. Further, Affirming would just amend laws to make the Aff world consistent with them. Felonies are “crime[s] for which the punishment in federal law may be death or imprisonment for more than one year” (Merriam-Webster). Accept Aff definitions and interps A. to offset Neg timeskew. Shifting the AC evaluation forces a 13 to 7 restart in the 1AR, when Affs already lose more, and B., because Neg can adapt and link their arguments into Aff definitions.

Charged is defined as “to accuse or blame,” so Aff does not have to defend equal punishment. Not all people charged with crimes eventually serve time, and the framers specifically used “charged” instead of “tried and punished” from 06 to avoid this debate. There is a clear legal distinction between the trial discussion of charged and the punishment one of convicted.

Dictionary.com writes:

Dictionary.com, The Hot Word—5 November 2010. [Blog published by dictionary.com, not random people. Updated daily with interesting information about the meaning of various words and phrases]. What’s the exact difference between being “charged,” “convicted,” and “sentenced” for a crime?

Today, former Oakland, California, transit police officer Johannes Mehserle received the minimum possible sentence in the controversial death of a teenager on January 1, 2009. The incident and subsequent trial have prompted outrage and violent protests. Today’s decision brings attention to the legal meanings of three verbs : “charge,” “convict,” and “sentence.” They appear in the news constantly, but do you know what each term actually describes? Let’s begin with “charge.” When a person is charged with a crime, a formal allegation (a statement not yet proven) of an offense is made. Once convicted, the person has been proven or declared guilty of the offense. In the United States, a person is convicted after a legal trial. After a conviction in criminal (as opposed to civil) proceedings, sentencing is next. When sentenced, the convicted criminal is issued a formal judgment that usually pronounces the punishment. The convict can appeal the sentence, but a sentence usually takes effect while appeals occur.

Even if Aff does defend punishment, “treated as” does not mean “treated with.” Normal means allows for separate facilities for juveniles, so arguments about placing juveniles with adults are irrelevant. Additionally, even if “treated as” means exactly the same, separate facilities treats juveniles and adults exactly the same by grouping each with its own age and holding them to the same standards, grouping likes with likes.

Also, Neg must demonstrate a relevant difference between juveniles and adults that justifies distinct treatment. Neg may not just argue that adult punishments are harmful as the logical conclusion is that neither adults nor juveniles should be treated by that system and therefore should be treated the same. This also includes arguments why a juvenile system is good without articulating why adults would be harmed.

The Value is Justice.

The Criterion is Not Procedurally Abusing Identity.

First, the legitimacy of laws is derived from consent and the mutual constraint by agreements between people and the government. Absent procedural checks restraining government abuse, law loses the basis upon which it is formed and the intention and weight of the law are lost. This is not the is-ought fallacy—these agreements between parties constitute the strongest moral weight because there is no objective good outside this constraint, which is why euthanasia differs from murder. Thus governments ought not take actions that violate its subjects and allow for manipulation of the agreements, meaning non-abuse is a prerequisite to other moral determinations.

Second, checks on abuse are a prerequisite to other moral formulations because they ensure people’s voices are heard and can participate in forming other rules. If government can exclude certain identities procedurally, the determinations it reaches are not true goods. Even if certain impacts like life seem “good” in a vacuum, the consent and willingness of others to pursue that “good” determines its true normative weight. Impacts do not occur in vacuums, and providing procedural checks to prevent exclusion are the only way to make accurate determinations.

But, government attempts to procedurally avoid the abuse come before failures to uphold those or actions of individual agents in the evaluation because we are only responsible for actions we intend to cause rather than ones we allow to occur. Intervening actors or circumstances could have prevented the harms we omit from stopping, meaning the blood is not on our hands. Further, we cannot know with certainty what other agents will do, whereas we have absolute control over our intentions. Even if we can weigh those probabilities, their system always creates a gamble with summing, whereas mine ensures consistent application. While governments may create permissions and prohibitions when regulating third parties, it only regulates itself when choosing to pass a policy about what its statutes embody, so this example is disanalogous.

I contend the age-based distinction procedurally abuses identity.

A separate system for juveniles denies their agency and excludes them as Other. The arbitrary cutoffs for age of majority across states prove—there is no inherent difference, just a drive to label.

Zhao writes:

Zhao, Guoping The Modern Construction of Childhood: What Does It Do to the Paradox of Modernity? (Social Foundations of Education, Oklahoma State University) November 24, 2010

Hardly realized is the fact that**,** unlike all other constructed categories of ‘‘other,’’ **children are going to be ‘‘us’’ and they are within us.** We are all the other, the child, until we enter adulthood. **It is** a more complex justification (andequally **unjust** I contend) **to label children in such a way, to keep them at a ‘‘safe’’ distance.** This treatment of the child as other, his/her lived experience, is part of our makeup. **It seems especially clear in the case of the child as other that the subduing, excluding, and managing of the other is also meant to subdue, exclude, and manage part of the self.** Foucault (1988) demonstrates the way certain ‘‘unacceptable’’ ways of being are made the other in one’s own body and mind in modernity. Similarly, the child other,and **the continuity between them and us creates a situation in which our makeup is inferior and in need of being controlled and excluded.** Thus, the modern subject is not a cohesive whole, but only fragmented pieces where portions of one’s being have to be constantly struggled against. The only modern construct of childhood that does not relegate children into the other category and seeks to acknowledge their agency is the construct of childhood as a period of active growth. But even in this construct, **the child’s agency and voice are systematically undermined by the** hidden **agenda of social control**. The problem with the modern constructions of childhood, it seems, exposes the deep logic of the project of the modern project**:** to enable their freedom and agency, **the modern subject must first be subdued, remolded, and kept under control.** The self-contradictory nature of **modernity**—that it **can only afford freedom to a transformed and idealized population**, that humanity is never meant to be freed—collapses the whole grand promise of modernity.

The statutory rhetoric is designed to euphemistically deny juvenile agency.

Reinbarz writes:

Reinharz, Peter. “Why Teen Thugs Get Away With Murder. City Journal, Autumn 1996. http://www.city-journal.org/html/6\_4\_a2.html

**Everything in the juvenile justice system is designed to relieve teen[s]** malefactors **of responsibility** for their criminal acts.Start with **the system’s euphemistic language, which defines deviancy** down **in** a way that approaches **Orwellian newspeak**. Under the Family Court Act, **gun-toting teen muggers are not criminals but** juvenile **“delinquents,”** and **they have not committed crimes but** rather **“acts which if committed by an adult would be a crime.”** As they haven’t committed crimes, it follows that they acquire no criminal record. **They are charged** in Family Court **as “respondents,” not** as **defendants**. They are **not indicted but “charged in a petition.” They don’t go to trial but appear at a “fact-finding hearing,” where they are “adjudicated”** rather than convicted, **and they go to “disposition” rather than being sentenced.**

The juvenile court constructs the juvenile identity as one that is less developed and more dependent, ignoring true identities. This is empirically verified.

Ainesworth writes:

Janet Ainesworth. Associate Professor, Seattle University School of Law, SYMPOSIUM—STRUGGLING FOR A FUTURE: JUVENILE VIOLENCE, JUVENILE JUSTICE: YOUTH JUSTICE IN A UNIFIED COURT: RESPONSE TO CRITICS OF JUVENILE COURT ABOLITION, BC Law Review, l/n)

That juvenile court's essentialist ideology classifies adolescents as a subclass of child rather than as a subclass of adult has far-reaching consequences, as can be seen by considering psycholinguistic research on how the creation and use of categories structures human thought and engenders inferences. 54 George Lakoff, a linguist who incorporates the findings of cognitive research in his work on semantics, found that this psychological research supports the conclusion that certain categories, which he call[ed]s basic-level idealized cognitive models ("ICMs"), are more basic to human thought than others. These ICM categories [\*939] serve as templates for thought, influencing the inferences that we draw when we include something as a member of the category in question. 56 Lakoff noted that researchers have observed certain "prototype effects" in the use of categories, in which some members of a category are thought of as better representatives of that category than other members. For instance, people rank robins and sparrows as better examples of the "bird" ICM than owls and eagles, who likewise are thought of as better examples than emus or penguins. Even though all of these examples in fact fully qualify as members of the "bird" ICM, the category has within it an internal logic that makes some of its members seem to us more "bird-ish" than others. 57 Moreover, this psycholinguistic research shows that when we make use of an ICM category, we tend to take attributes characteristic of the "prototype" members of the category and by extrapolation apply them to other, non-"prototype" category members. 58 This means that "new information about a representative category member is more likely to be generalized to nonrepresentative members than the reverse." 59 Thus, information learned about "prototype" birds like robins is more likely to be inferred as true about less "prototype" birds such as ducks, while information about ducks is less likely to be attributed to robins. 60 The category "child" functions as a basic-level idealized cognitive model, and prototype effects can be seen in its usage. That is, if someone were to say, "Look at those children," without any additional qualifying information, the image conjured up is not of a group of infants or teenagers, but of preadolescents. Even though babies, toddlers, elementary school-aged students, teenagers, and adult offspring are all members of the ICM "child," the most "childish" prototypical members are those who are postinfancy and prepuberty. Since these children represent the prototype "child," then the classification of the adolescent as a member of the ICM "child" results in unconsciously adopted inferences derived from our knowledge and beliefs about the prototype "child" being applied to adolescents. In other words, by [\*940] calling adolescents "children," our perceptions of specific adolescents will be affected by what we expect and know is true of prototypical "children." Characteristics of the prototype "child" thus are exaggerated in our perceptions of the adolescent, and characteristics that are inconsistent with the prototype "child" are minimized, trivialized, or even completely denied. In this way, the impact of the essentialist ideology of the juvenile court is compounded by the prototype effect involved in classifying its adolescent subjects as "children." Those in the juvenile justice system who give credence to this ideology expect to see -- and so will tend to see -- in adolescents the prototypical childlike qualities of dependency, vulnerability, and malleability. Similarly, because prototypical children are said to lack the judgment and experience to understand the future consequences of their actions and to make wise decisions in important matters, adolescents will be assumed to share these deficiencies as well. Having defined the subject of the juvenile justice system as the "child," juvenile court ideology constructs the juvenile accused as "childlike."

Judges use their discretion to arbitrarily mold juveniles according to their unchecked whim.

Ainsworth 2:

Princeton UniversityThe Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency CasesAuthor(s): Janet E. AinsworthSource: The Future of Children, Vol. 6, No. 3, The Juvenile Court (Winter, 1996), pp. 64-74Published by: Princeton UniversityStable URL: http://www.jstor.org/stable/1602594 .Accessed: 12/01/2011 21:25

Nevertheless, more recent studies of the juvenile court confirm the findings of the earlier ones. Empirical and evaluative research, as well as survey research, indicate[s] that the system today has failed to deliver the procedural justice promised by Gault. For example, in a 1994 survey of 100 juvenile court judges, lawyers, and probation officers, a majority of the interviewed respondents, including nearly half of the juvenile court judges, described judicial conduct that they believed sometimes compromised the abilities of the juvenile defendants [getting] to get a fair trial. This conduct included forcing unprepared parties to proceed with trial or a guilty plea, interrupting the lawyers' witness examinations with their own questions, and cutting off the lawyers' questioning. Two thirds of the surveyed court workers noted that juvenile court judges often had knowledge before trial of the accused juvenile's prior criminal record and of the recommended disposition from the probation officer, and a majority of the respondents thought that this knowledge created a bias in the judge against the juvenile. Despite the requirement that guilt be proven beyond a reasonable doubt, almost half of the respondents maintained that juvenile court judges found juveniles guilty even when the evidence did not meet that standard. More than a third of the surveyed participants felt that juvenile court judges admitted evidence that should have been excluded under the rules of evidence." Many respondents observed that juvenile court hearings were conducted too quickly, that the atmosphere was not serious enough, and that the treatment orientation of juvenile court personnel--including judges, prosecutors, and defense counsel---interfered with the accused juvenile's ability to have a fair trial. Sanbom's study, acknowledging that adult defendants do not always receive mandated procedural justice, nonetheless concluded that the procedural deficiencies of the juvenile court system were worse than those of the adult system.

Even if juries are worse than judges, juveniles can waive their right to trial by jury when treated as adults, so there’s no risk of harm AND the state has still provided a check. Additionally, it’s the perception of getting a fair shake from the state that matters, so the actual end of juries being worse would be irrelevant. Further, in the Aff world, juveniles can still plea bargain to avoid going before a jury if they want. While they can plea in the Neg world too, a jury gives juveniles a democratizing way to procedurally check overzealous prosecutors who want to exploit them with a bad deal.

But, juries are good for them.

Ainesworth 3:

Princeton UniversityThe Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency CasesAuthor(s): Janet E. AinsworthSource: The Future of Children, Vol. 6, No. 3, The Juvenile Court (Winter, 1996), pp. 64-74Published by: Princeton UniversityStable URL: http://www.jstor.org/stable/1602594 .Accessed: 12/01/2011 21:25

Denial of the right to trial by jury hurts juveniles accused of crime in several ways. First and foremost, juries acquit more readily than do judges, so juveniles are more likely to be convicted than if they could opt for jury trial." There are a number of reasons juries are more likely to acquit than judges. Judges, particularly in high-volume courts such as juvenile court, hear hundreds, even thousands, of cases a year, compared with the one or two that jurors hear during their service. Having to sit on so many cases, judges may become less careful in weighing the evidence and more cynical in evaluating the credibility of the juveniles who appear before them. This is all the more likely when they know before trial of the juvenile's prior record, have heard the motion to suppress a confession, or have read the probation officer's report on the juvenile's social background. In addition, the parties in a jury trial have an opportunity to exclude jurors whose personal biases may prevent them from fairly trying the case. Jurors undergo voir dire examination, in which the litigants may probe to determine whether any juror's attitudes, experiences, or beliefs might adversely affect the way in which he or she would hear the case. No comparable opportunity exists to inquire into potential bias or prejudice by the judge in a bench trial. Denial of the right to jury trial disadvantages juveniles even after the fact-finding stage. In a jury trial, jurors must [also] be explicitly instructed in the law to be applied in the case by the trial judge through written jury instructions. Any error of law can be later reviewed by an appellate court. However, when a judge sits without a jury, she need not expressly articulate her understanding of the law; therefore, the appellate court has no way of determining whether the juvenile court judge misunderstood or misapplied the law to the juvenile's detriment. Thus, depriving juveniles of jury trial puts them at a double disadvantage compared with adult defendants: they are more likely to be convicted at trial and are less likely to be able to demonstrate an error of law on appeal.

The juvenile system uses indiscriminate shackling to impose pain on juveniles and make them subservient to adults.

USA Today writes:

USA Today 2007[[1]](#footnote-1)

At issue is whether kids as young as 10 need to be shackled for court security, and whether putting chains on young defendants not only makes them look like criminals but also makes them more likely to think of themselves in that way. The U.S. Supreme Court has said repeatedly that the sight of shackles on a defendant in a courtroom can unfairly influence a jury. Adult defendants may not appear in court in shackles in front of a jury that decides their fate. In almost all juvenile proceedings, though, a defendant's fate is in the hands of a judge, not a jury. Juvenile court procedures vary among the states and even within counties, so it's unclear precisely how many juvenile courts routinely shackle young defendants. But USA TODAY has found that in 28 states, some juvenile courts routinely keep defendants in restraints during court appearances.

This shackling intends to cause pain and trauma to break down the juvenile and allow coercion.

Perlmutter[[2]](#footnote-2) writes

Shackling a child interferes with the child's fundamental due process right to the "guiding hand of counsel" [n194](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n194) deemed so essential to help the juvenile "cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense." [n195](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n195) [\*37]  Just as **shackles "impose physical burdens**, pains, and restraints" on an adult criminal defendant, **"tend to confuse and embarrass" his "mental faculties," and, therefore,** "materially . . . **abridge and prejudicially affect his constitutional rights,"****[n196](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n196)**in the case of a child facing allegations of delinquency,the prejudicial effects of shackles in the courtroom, in practical, clinical, and constitutional terms, are markedly more severe and debilitating. First, handcuffing a child handicaps the child's ability to communicate with counsel. Putting cuffs on the child's wrists impairs the child's motor coordination, making it difficult to write messages to counsel while the hearing is in progress, if talking to the defense lawyer is impractical. Second, research on the problems manifested by children in the juvenile justice system reveals that most "are affected by trauma, at least half are struggling with learning disabilities, and all are limited by their childish thinking." [n197](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n197) Because these conditions are already known to impair their ability to assist counsel, chaining a child in the courtroom may even further hamper the child's ability to communicate and interact with counsel due not only to physical handicaps or discomforts associated with cuffs or shackles, but to psychological effects. Like adults, but even more so, shackled children are likely to be confused or embarrassed by their restraints. [n198](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n198) Third, **beyond impairing the child's physical ability to communicate and causing the child to have a lowered self-image, shackling may exact a coercive effect on the child's ability to freely and voluntarily decide whether to engage in plea-bargaining or to proceed to trial. The restraints may in fact coerce the child to believe that he must waive rights to counsel, to trial, or to plea bargain in order to have the shackles removed.**[n199](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n199) Thus, the impairment of a child's physical movement and mental faculties, psychological harm, and interference with the child's ability to assist counsel caused by shackling, constitute significant burdens to the child's constitutionally guaranteed right to be guided by counsel during a hearing.

Presumption and permissibility go Aff because we always default to treating people as moral equals absent a good reason not to. Additionally, they go Aff because of the Neg time skew. Even if there are substantive reasons they go Neg, the disadvantage of Affirming denies the fairness of that substantive interpretation and requires they Affirm. Finally, absence of good reason to Negate generates an obligation to Affirm because there are harms inherent in the status quo that we cannot be complicit with and are thus obligated to make an attempt to decrease.

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1. [“Should kids go to court in chains” http://www.usatoday.com/news/nation/2007-06-17-shackles\_N.htm] [↑](#footnote-ref-1)
2. SYMPOSIUM ISSUE: IN RE GAULT: ARTICLE: "UNCHAIN THE CHILDREN": GAULT, THERAPEUTIC JURISPRUDENCE, AND SHACKLING NAME: Bernard P. Perlmutter \*  
    [↑](#footnote-ref-2)